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IN THE UNITED STATES DISTRICT COURT
95 SEP 19 1995 FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL A. AUSTIN, RICHARD ELLIOT,)
OGIE HAYES, AND CHARLES GUESS)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

SECOND AMENDED
COMPLAINT

vs.)

Case No. 95-T-637-N

FOB JAMES, JR., Governor of the)
State of Alabama, and)
RON JONES, Commissioner of the)
Alabama Department of Corrections,)

Defendants.)

SECOND AMENDED COMPLAINT

NATURE OF THE ACTION

1. This is a civil action brought to vindicate the plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983. Plaintiffs seek injunctive relief to require the defendants to stop shackling prisoners in "chain gangs" and handcuffing them to "hitching posts." These practices deprive prisoners of their innate human dignity and are barbaric, cruel and unusual. The chain gangs expose plaintiffs to a substantial risk of physical injury and death. The use of the hitching post deprives inmates of liberty without due process of law. Both practices deprive the plaintiffs of two of the most basic human needs -- reasonable safety and dignity.

JURISDICTION

2. This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343.

3. This Court has jurisdiction over plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

PARTIES

4. Plaintiff Michael A. Austin was an inmate at the Limestone Correctional Facility in Capshaw, Alabama, and was assigned to the "chain gang dorm."

5. Plaintiff Richard Elliot was an inmate at the Limestone Correctional Facility in Capshaw, Alabama, and was assigned to the chain gang dorm.

6. Plaintiff Ogie Hayes was an inmate at the Limestone Correctional Facility in Capshaw, Alabama, and was assigned to the chain gang dorm.

7. Plaintiff Charles Guess was an inmate at the Limestone Correctional Facility in Capshaw, Alabama, and was assigned to the "chain gang dorm."

8. Defendant Fob James, Jr., is Governor of the State of Alabama and, in such capacity, has the duty and responsibility to manage, supervise and control all penal and correctional institutions. He is responsible for supervising the employment of prisoners within or without the walls or enclosures of all state prisons. He appoints the Commissioner of the Alabama Department of Corrections. He is sued in his official capacity.

9. Defendant Ron Jones is Commissioner of the Alabama Department of Corrections. He serves at the pleasure of the Governor. He is responsible for the administration of the state correctional facilities in Alabama and for ensuring that the prisons operate in a manner that is consistent with the United States Constitution. He is sued in his official capacity.

CLASS ACTION

10. The plaintiffs bring this suit on their own behalf and on behalf of the class of all present and future Alabama inmates who have been or may be assigned to work in chain gangs.

11. The individual plaintiffs sue on their own behalf and as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure. The prerequisites of Rule 23(a) and Rule 23(b)(2) are satisfied.

STATEMENT OF FACTS

12. On May 3, 1995, Alabama became the first state in the nation to reinstitute the notorious prison "chain gang" after abolishing it over thirty years ago. Plaintiffs Austin, Elliot, Hayes, and Guess were members of the chain gang and are subject to being reassigned to it in the future.

13. The decision to reinstitute chain gangs was made by defendants James and Jones. Defendant James first suggested the idea on a radio talk show during the final weeks of his gubernatorial campaign.

14. The use of chain gangs originally began in Alabama following the Civil War. They were seen as a form of cheap labor that could build roads across the state and reduce prison overcrowding.

15. The chain gang system was abolished throughout the South by the early-1960s. The abolition came about as a result of widespread attention to the horrors of chain gangs combined with evolving standards of decency that marked the progress of America's maturing as a society.

16. Alabama's current chain gangs consist of approximately 340 inmates incarcerated in a "chain gang dorm" at Limestone Correctional Facility, forty inmates incarcerated at Staton Correctional Facility, and disciplinary chain gangs at Easterling and Draper Correctional Facilities.

17. The chain gang members are transported to their work site each

morning on buses specially designed for the chain gang program. Unlike other Department of Corrections buses, the emergency exits at the rear of the chain gang buses are sealed shut.

18. The prisoners in the chain gangs are chained together with leg irons in groups of five. The chained groups are forced to labor for ten hours a day.

19. The inmates, who wear white uniforms with the words "Chain Gang" emblazoned in black, swing blades and wield axes and shovels to cut grass and pick up litter on the highways.

20. The use of leg irons to chain inmates together poses a substantial risk of serious harm or death to plaintiffs as they labor on the roadside in close proximity to cars and trucks driving at speeds of over fifty-five miles per hour.

a. The mere presence of chain gangs on the roadside increases the likelihood of accidents, because the chain gang system infuses a large new class of pedestrians onto Alabama roads for ten hours each day.

b. The defendants intend for the sight of prisoners laboring in chain gangs to attract the attention of car and truck drivers. Defendants' actions have had their intended effect -- drivers' attention is diverted away from the roads, thus increasing the likelihood of accidents.

c. Inmates who are chained together with leg irons are unable to move out of harm's way in the event that an accident is about to occur.

d. The chain gang system significantly increases the risk that several inmates will be injured if an accident involving a motor

vehicle occurs, because an entire "gang" can be dragged into the accident by the chains that bind them.

21. In just the first two weeks after the chain gangs were reinstituted, several near accidents took place as drivers slowed down to gawk at the prisoners. While one distracted driver slowed down to wave and honk at the chain gangs, she swerved in front of an eighteen wheeler truck and nearly collided with it.

22. The use of chain gangs creates a substantial and constant risk of violence among the chain gang members and poses a serious and constant threat to plaintiffs' health and safety.

a. The use of leg irons to chain inmates together for ten hours each day during forced labor in extreme heat has created and will continue to create serious conflicts between the prisoners.

b. Many of the prisoners who are assigned to the chain gangs are classified as "medium security risks" and often have histories of violent crime, thus increasing the risk that violence will occur.

c. Armed with blades, shovels, axes, sledgehammers, and rocks, prisoners have abundant tools that allow their conflicts to escalate into deadly violence, thus endangering plaintiffs' health and safety.

d. Because prisoners are chained together, the ability of a prisoner to protect himself if violence occurs is severely restricted.

e. The ratio of only one guard to forty inmates renders the guards unable to reasonably protect prisoners from the threat of violence at the hands of other prisoners.

23. During just the first three weeks after the reinstitution of the chain gang, there were several arguments and shoving matches and at least three physical confrontations between inmates who were chained together. One

physical confrontation involved two roadside inmates who raised their tools against one another while arguing.

24. When a fight occurs between chain gang members, the guard immediately aims his gun at the entire linked group. On several occasions, guards have fired warning shots into the air above inmates' heads.

25. Plaintiffs Austin and Elliot reasonably felt they were in danger when, as a result of the altercation between the roadside inmates discussed above, the guard suddenly blew his whistle and threatened to shoot into the crowd if the prisoners did not immediately "hit the ground."

26. The practice of chaining inmates together also inhibits their ability to protect themselves from other dangers which may arise, including the risk of being bitten by poisonous snakes, attacked by a swarm of wasps or hornets, or hit by a tree cut down by the inmates. Many inmates have encountered snakes during their work. One inmate became so terrified when he saw a snake that he pulled his ankle out of the leg iron, creating a panic among other inmates who feared being shot by the guards.

27. Class members reasonably fear that working on the chain gang creates a substantial risk of serious physical harm to them due to the threat of traffic accidents, inmate violence, and other dangers.

28. The chain gangs are a constant source of wanton and unnecessary pain to the plaintiffs. The chains and leg irons inflict extreme psychological pain on the inmates, humiliating and degrading them. The leg irons further cause them physical pain, constantly rubbing and chafing against their legs while they work. Inmates frequently suffer from swollen ankles, sunstroke, poison ivy, and chigger bites.

29. As part of a systematic effort to degrade and humiliate chain gang inmates, guards assigned to the chain gang frequently use unnecessary force against inmates and hurl racial epithets at them.

30. Chaining men together like animals is a barbarous punishment, specifically designed to inflict mental pain upon prisoners. It deprives class members of a fundamental human need -- dignity. This inhumane condition of confinement offends the contemporary standards of decency.

31. By placing the chain gangs alongside major highways, the defendants intend to publicly humiliate chain gang inmates and make them an object of mockery, hatred and derision. Drivers frequently honk and hurl epithets at the chain gang members working along the road. One motorist fired a pistol into the air above chain gang members.

32. The only toilet facility available to chain gang inmates is a portable chamber pot behind a make-shift screen next to the road. Inmates remain chained to the gang while defecating into the chamber pot. The "toilet" contains a plastic bag that holds all of the inmates' wastes for the entire day. There is no toilet paper and no facility for inmates to wash their hands after use and prior to eating lunch. When the chamber pot is inaccessible, inmates are forced to squat down on the ground to defecate in public. Requiring prisoners to defecate in this manner exposes them to unsafe sanitary conditions and deprives them of their basic human dignity.

33. Each condition described herein by itself and in combination with each other condition causes plaintiffs to suffer extreme fear, anxiety, and psychological stress, resulting in their physical and mental deterioration.

34. Inmates on the chain gang are handcuffed to a "hitching post" as punishment if they refuse or are physically unable to work. Guards shackle prisoners' hands to a metal restraining bar where they must stand all day in

the hot sun. Inmates have had their limbs stretched taut and have suffered dizziness and pain. Inmates must urinate against a chain link fence, and at least one has been forced to defecate into a bucket.

35. The hitching post is a barbaric and inhumane method of torture that offends contemporary standards of decency. Its use as punishment inflicts wanton and unnecessary physical and psychological pain on prisoners. It is applied maliciously and sadistically for the very purpose of causing harm.

36. Hitching prisoners to a post for refusing to work constitutes a substantial interference with inmates' liberty interest to be free from bodily restraint and exceeds their sentence in an unexpected manner. Use of the hitching post also imposes an atypical and significant hardship on inmates in relationship to the ordinary incidents of prison life.

37. Prisoners who are handcuffed to the hitching post endure infliction of physical pain and a substantial loss of liberty without due process of law. They receive disciplinary hearings only *after* they have served time on the hitching post. There are no emergency conditions justifying the timing of the disciplinary hearings.

38. The risk of erroneously handcuffing prisoners to the hitching post is substantial. One chain gang inmate, for example, was ordered to serve time on the hitching post for refusing to work after he had an epileptic seizure. After being removed from the chain gang and driven back to the prison, the inmate was handcuffed to the hitching post for ten hours. There, the prisoner was forced to stand with his hands above his head all day for the entire day. His wrists and hands became numb, and he suffered dizziness and constant pain. A disciplinary hearing later cleared him of all charges.

39. Defendants know but are deliberately indifferent to the fact that their practices create a substantial risk of serious harm to the inmates and deprive them of their basic human needs.

40. Defendants' practices have no penological justification.

41. Defendants have acted and continue to act under color of state law.

42. Plaintiffs do not have an adequate remedy at law.

CLAIMS FOR RELIEF

43. Defendants' deliberate indifference to the substantial and constant risk of serious harm and death to plaintiffs created by their use of prisoner chain gangs has inflicted cruel and unusual punishment on plaintiffs in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

44. Defendants' use of chain gangs to punish prisoners is barbarous, inhumane, and cruel and, as such, violates the Eighth and Fourteenth Amendments to the United States Constitution.

45. Defendants' deliberate indifference to the unsanitary toilet facilities imposed on chain gang inmates has inflicted cruel and unusual punishment on plaintiffs in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

46. Defendants' practice of placing prisoners on a hitching post is cruel and unusual and, as such, violates the Eighth and Fourteenth Amendments to the United States Constitution.

47. Defendants' practice of placing prisoners on a hitching post without first according them a hearing deprives them of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

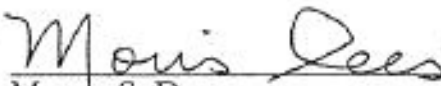
48. The violations of plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Honorable Court grant the following relief:

1. Certify the plaintiff class in this action;
2. Declare unconstitutional and unlawful Alabama's institution of chain gangs;
3. Declare unconstitutional and unlawful Alabama's use of unsanitary toilet facilities for chain gang inmates;
4. Declare unconstitutional and unlawful Alabama's practice of placing prisoners on the hitching post;
5. Declare unconstitutional and unlawful Alabama's practice of punishing prisoners on the hitching post without first according them a hearing;
6. Enter a permanent injunction requiring the defendants, their agents, employees, and all persons acting in concert with them to cease their unconstitutional and unlawful practices;
7. Award plaintiffs reasonable costs and attorneys' fees; and
8. Grant plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Second Amended Complaint, by first-class mail, postage prepaid, on the 1st of September, 1995, on the persons whose addresses are listed below:

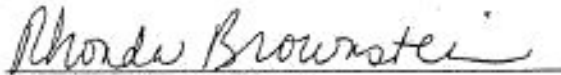
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